

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALAN B. KANE and
BONNIE F. KANE

v.

GARY S. MAYERSON, ESQUIRE and
MAYERSON & ASSOCIATES, P.C.

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CIVIL ACTION

NO. 09-cv-00058-JF

MEMORANDUM

Fullam, Sr. J.

May 21, 2009

Plaintiffs began this action on December 22, 2006, in the Court of Common Pleas of Bucks County, Pennsylvania, by filing a writ of summons. It was not until December 18, 2008, that plaintiffs filed and served their complaint in the action, and it then became clear that the parties were of diverse citizenship and the amount in controversy exceeded the jurisdictional threshold for federal jurisdiction. On January 7, 2009, defendants filed their notice of removal, removing the action to this Court. Plaintiffs have now filed a motion for remand.

The applicable statute, 28 U.S.C. § 1446(b), requires that the notice of removal be filed within 30 days after the defendant receives a pleading or other document which reveals the prerequisites for removal. The same statute further provides, however: "Except that a case may not be removed on the basis of jurisdiction conferred by § 1332 of this Title more than one year after commencement of the action."

Defense counsel is obviously correct in asserting that the removal notice was filed less than 30 days after receipt of the complaint, but seems to have overlooked the one-year deadline. The motion for remand must therefore be granted.

Defendants argue that the late filing was attributable entirely to the failure of plaintiffs' counsel to comply with their frequent requests for a copy of the proposed complaint in the state-court action. Defense counsel did not, however, seek to compel a filing of the complaint by presenting a praecipe for that relief in the state court.

In the circumstances of this case, I decline to impose sanctions upon either side.

An Order follows.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.